

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1212-WQ TCEQ ID: RN104917901 CASE NO.: 34322
RESPONDENT NAME: FRANK LAMAS DBA LAMAS SURPLUS

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 345 E. Wheeler Avenue, Aransas Pass, San Patricio County</p> <p>TYPE OF OPERATION: scrap and waste recycling facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 13, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 40px;">TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 40px;">TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933</p> <p style="margin-left: 40px;">TCEQ Regional Contact: Mr. David Kennebeck, Corpus Christi Regional Office, MC R-14, (361) 825-3111</p> <p style="margin-left: 40px;">Respondent: Mr. Frank Lamas, Owner, Lamas Surplus, 345 E. Wheeler Ave., Aransas Pass, Texas 78336</p> <p style="margin-left: 40px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review </p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 1, 2007</p> <p>Date of NOE Relating to this Case: May 21, 2007</p> <p>Background Facts: The case was referred to the Litigation Division on November 5, 2007. EDPRP was filed on January 2, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on January 7, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>WQ: Failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or a Texas Pollutant Discharge Elimination System Multi-Sector General Permit [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c)].</p>	<p>Total Assessed: \$4,200</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Due to General Revenue: \$4,200</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the General Construction Permit requirements. 2. Within 45 days, submit written to demonstrate compliance with this Ordering Provision.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

TCEQ

DATES	Assigned	29-May-2007	Screening	6-Jun-2007	EPA Due	
	PCW	23-Oct-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	Frank Lamas dba Lamas Surplus		
Reg. Ent. Ref. No.	RN104917901		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34322	No. of Violations	1
Docket No.	2007-1212-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Cynthia McKaughan
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$	Limit Minimum	\$0	Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$200
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Notes	The penalty is enhanced because the Respondent received one NOV with violations same or similar to those cited in this action.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes	The Respondent does not meet the good faith criteria.
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Total EB Amounts	\$145	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$2,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,200
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OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes	
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Final Penalty Amount	\$4,200
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STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty	\$4,200
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DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement
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PAYABLE PENALTY

\$4,200

Screening Date 6-Jun-2007

Docket No. 2007-1212-WQ-E

PCW

Respondent Frank Lamas dba Lamas Surplus

Policy Revision 2 (September 2002)

Case ID No. 34322

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN104917901

Media [Statute] Water Quality

Enf. Coordinator Cynthia McKaughan

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The penalty is enhanced because the Respondent received one NOV with violations same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 6-Jun-2007 Respondent Frank Lamas dba Lamas Surplus Case ID No. 34322 Reg. Ent. Reference No. RN104917901 Media [Statute] Water Quality Enf. Coordinator Cynthia McKaughan Violation Number <input type="text" value="1"/>	Docket No. 2007-1212-WQ-E <div style="text-align: right;">PCW</div> <div style="text-align: right; font-size: small;"> Policy Revision 2 (September 2002) PCW Revision May 25, 2007 </div>																								
Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)																									
Violation Description Failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or a Texas Pollutant Discharge Elimination System Multi-Sector General Permit for storm water. Specifically, the Respondent did not develop and implement a storm water pollution prevention plan (SWP3) and obtain coverage to discharge storm water at the site.																									
Base Penalty <input style="width: 100px;" type="text" value="\$10,000"/>																									
>> Environmental, Property and Human Health Matrix																									
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">Release</td> <td style="width: 20%; text-align: center;">Harm</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> Percent <input style="width: 50px;" type="text" value="0%"/> </div>		Release	Harm						Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
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>> Programmatic Matrix																									
Matrix Notes	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">Falsification</td> <td style="width: 20%; text-align: center;">Major</td> <td style="width: 10%; text-align: center;">Moderate</td> <td style="width: 10%; text-align: center;">Minor</td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td style="text-align: center;">X</td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> Percent <input style="width: 50px;" type="text" value="10%"/> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px; text-align: center;"> 100% of the rule requirement was not met. </div>		Falsification	Major	Moderate	Minor			<input type="text"/>	X	<input type="text"/>	<input type="text"/>													
	Falsification	Major	Moderate	Minor																					
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Adjustment <input style="width: 100px;" type="text" value="\$9,000"/>																									
<input style="width: 100px;" type="text" value="\$1,000"/>																									
Violation Events																									
<div style="display: flex; justify-content: space-between;"> <div> Number of Violation Events <input style="width: 50px;" type="text" value="4"/> </div> <div> <input style="width: 50px;" type="text" value="112"/> Number of violation days </div> </div> <div style="margin-top: 10px;"> <div style="display: flex; align-items: center;"> <div style="font-size: x-small; margin-right: 5px;"> mark only one with an x </div> <table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td style="text-align: center;">X</td></tr> <tr><td style="padding: 2px;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td><input type="text"/></td></tr> </table> </div> <div style="text-align: right; margin-top: 10px;"> Violation Base Penalty <input style="width: 100px;" type="text" value="\$4,000"/> </div> </div>		daily	<input type="text"/>	monthly	X	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>												
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single event	<input type="text"/>																								
<div style="border: 1px solid black; padding: 5px;"> Four monthly events are recommended from the date of the investigation (March 1, 2007) through the date of screening (June 6, 2007). </div>																									
Economic Benefit (EB) for this violation																									
<div style="display: flex; justify-content: space-between;"> <div> Estimated EB Amount <input style="width: 100px;" type="text" value="\$145"/> </div> <div> Statutory Limit Test </div> </div>																									
<div style="display: flex; justify-content: space-between;"> <div> Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$4,200"/> </div> </div>																									
This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$4,200"/>																									

Economic Benefit Worksheet

Respondent: Frank Lamas dba Lamas Surplus

Case ID No. 34322

Reg. Ent. Reference No. RN104917901

Media: Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$2,000	1-Mar-2007	14-Mar-2008	1.0	\$7	\$138	\$145
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a stormwater permit and to develop and implement a stormwater pollution prevention plan. Date required is the investigation date. Final Date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$145

Compliance History

Customer/Respondent/Owner-Operator:	CN603000605	LAMAS, FRANK	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN104917901	LAMAS SURPLUS	Classification: AVERAGE	Site Rating: 3.00
<hr/>				
ID Number(s):				
Location:	345 E WHEELER AVE, ARANSAS PASS, TX, 78336		Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	June 05, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 05, 2002 to June 05, 2007			
<hr/>				
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cynthia McKaughan	Phone:	512-239-0735	

Site Compliance History Components

- | | |
|--|-------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | Frank Lamas Enterprises |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 05/21/2007 (560424)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 05/04/2006 (461757)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Rqmt Prov: PERMIT TPDES MSGP for Storm Water - TXR050000
 Description: Failure to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the MSGP TXR050000 issued under the TPDES. The facility's primary SIC code (5093) falls under sector N of the MSGP.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FRANK LAMAS DBA LAMAS
SURPLUS;
RN104917901**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2007-1212-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, 40 CODE OF REGULATIONS pt. 122, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Frank Lamas dba Lamas Surplus ("Mr. Lamas").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Lamas owns and operates a scrap and waste recycling facility located at 345.E. Wheeler Avenue, Aransas Pass, San Patricio County, Texas (the "Facility").
2. The Facility has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an investigation conducted on March 1, 2007, a TCEQ Corpus Christi Regional Office investigator documented that Mr. Lamas failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or a Texas Pollutant Discharge Elimination System Multi-Sector General Permit for storm water. Specifically, Mr. Lamas did not develop and implement a storm water pollution prevention plan (SWP3) and obtain coverage to discharge storm water at the Facility.
4. Mr. Lamas received notice of the violation on or about May 26, 2007.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Frank Lamas dba Lamas Surplus" (the "EDPRP") in the TCEQ Chief Clerk's office on January 2, 2008.
6. By letter dated January 2, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Lamas with notice of the EDPRP. According to the return receipt "green card," Mr. Lamas received notice of the EDPRP on January 7, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Lamas received notice of the EDPRP, provided by the Executive Director. Mr. Lamas failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Lamas is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, 40 CODE OF REGULATIONS pt. 122, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Lamas failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or a Texas Pollutant Discharge Elimination System Multi-Sector General Permit for storm water, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Lamas with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Lamas failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Lamas and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Lamas for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of four thousand two hundred dollars (\$4,200.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Lamas is assessed an administrative penalty in the amount of four thousand two hundred dollars (\$4,200.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Lamas' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Frank Lamas dba Lamas Surplus; Docket No. 2007-1212-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Lamas shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Lamas shall develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the General Construction Permit requirements, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c) to:

Wastewater Permitting Section
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Order, Mr. Lamas shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. Lamas shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a.:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

David Kennebeck, Water Section, Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Mr. Lamas. Mr. Lamas is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Lamas fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Lamas's failure to comply is not a violation of this Order. Mr. Lamas shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Lamas shall notify the Executive Director within seven days after Mr. Lamas becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Lamas shall be made in writing to the Executive Director. Extensions are not effective until Mr. Lamas receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Lamas if the Executive Director determines that Mr. Lamas has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RUDY CALDERON

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Rudy Calderon. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Frank Lamas dba Lamas Surplus" (the "EDPRP") was filed with the Office of the Chief Clerk on January 2, 2008.

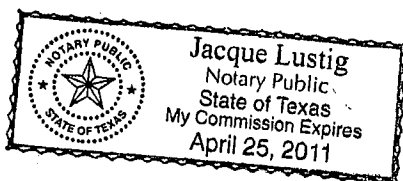
The EDPRP was mailed to Mr. Lamas at its his last known address on January 2, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Lamas received notice of the EDPRP on January 7, 2008, as evidenced by the signature on the card.

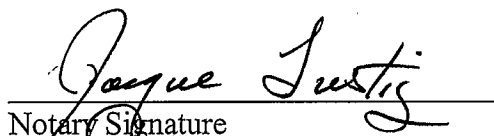
More than 20 days have elapsed since Mr. Lamas received notice of the EDPRP. Mr. Lamas failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."


Rudy Calderon, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 21st day of August, A.D., 2008.




Notary Signature